

No. PD-1096-19

EX PARTE

CHRISTOPHER RION

FILED
COURT OF CRIMINAL APPEALS
3/24/2022
IN THE COURT OF CRIMINAL APPEALS, CLERK
DEANA WILLIAMSON
APPEALS OF TEXAS

State's Motion to Reconsider Mandate on Court's Own Motion

The State of Texas respectfully requests that this Court, on its own motion, reconsider its mandate in this case.

I. Procedural History: The only issue in this appeal was collateral estoppel.

In the trial court, this case was a pretrial habeas action collaterally attacking a pending indictment on collateral estoppel grounds. The trial court entertained Appellant's claims but denied him relief, and he appealed. On appeal, Appellant raised only his collateral estoppel claim. *Ex parte Rion*, No. 05-19-00280-CR, 2019 WL 4386371, at *1 (Tex. App.—Dallas Sept. 13, 2019), *rev'd*, 632 S.W.3d 895 (Tex. Crim. App. 2021). The Fifth Court of Appeals reversed, and the State petitioned this Court for discretionary review. This Court granted the State's petition and issued an opinion reversing the court of appeals' decision. *Ex parte Rion*, 632 S.W.3d 895 (Tex. Crim. App. 2021). Appellant's collateral estoppel claim, which was resolved by this Court's opinion, was his only claim on appeal.

II. The mandate reversed and remanded to the court of appeals instead of the trial court.

In this case, the State prayed that the Court would “reverse the decision of the court of appeals and affirm the trial court’s order denying pretrial habeas relief.” (State’s Br. at 28). To use the language of the rule governing this Court’s judgments, the State asked this Court to “reverse the court’s judgment in whole or in part and render the judgment that the lower court should have rendered.” Tex. R. App. P. 78.1.

This Court’s opinion reversed the judgment of the court of appeals and remanded the case to an unspecified court: “The judgment of the court of appeals is reversed, and the matter is remanded for proceedings consistent with this opinion.” *Ex parte Rion*, 632 S.W.3d 895, 908 (Tex. Crim. App. 2021). Given the posture of this case, undersigned counsel interpreted this language remanding the “matter” as a remand to the trial court for further prosecution (unencumbered by habeas claims). After all, that is how this Court disposed of the seminal collateral-estoppel case *Ladner*, which arose in the same procedural posture. *Ladner v. State*, 780 S.W.2d 247, 258 (Tex. Crim. App. 1989) (“the judgment of the court of appeals is reversed and the cause is remanded to the trial court.”); *see also Ex parte Watkins*, 73 S.W.3d 264, 275 (Tex. Crim. App. 2002) (“we affirm the decision by the Second Court of Appeals and remand this case to the trial court for further proceedings consistent with this opinion.”).

Of course, “the clerk of the appellate court that rendered the judgment must issue a mandate in accordance with the judgment.” Tex. R. App. P. 18.1. Unlike the courts of appeals, which by rule must issue a written judgment with their opinions, this Court does not issue separate written judgments heralding the precise language of the mandate. When this Court’s mandate issued, it remanded the case to the court of appeals, even though this Court’s judgment is “final and conclusive” as to all appealed habeas claims, and Appellant had not raised any other claims. Tex. R. App. P. 31.5.

Admittedly, this Court has done this once before. *Ex parte Adams*, 586 S.W.3d 1, 9 (Tex. Crim. App. 2019). In *Adams*, the opinion similarly did not specify the court of remand, and the mandate remanded the case to the court of appeals. *Id.* The Eastland court of appeals quickly issued a per curiam opinion explaining that no issues remained, citing Rule 31.5, and expressly affirming the trial court. *Ex parte Adams*, No. 11-17-00332-CR, 2019 WL 6210294, at *1 (Tex. App.—Eastland Nov. 21, 2019, no pet.). But that has not happened here.

III. The court of appeals has taken no further action in the case.

When this case was first presented to the Dallas court of appeals, the court exercised its discretion to impose an expedited timeline on briefing. *Rion*, No. 05-19-00280, order entered Mar. 7, 2019; *accord* Tex. R. App. P. 31.1(b). However, since this Court’s mandate issued four months ago, the court of appeals has not acted in the case. Perhaps the court of appeals believes it cannot act, given that this Court’s

judgment is final and conclusive. *See* Tex. R. App. P. 31.5. Perhaps it is trying to decide exactly what to do with no issues remaining in the case. Either way, the court of appeals has taken no action in reliance on the “remand” part of the mandate. Meanwhile, the State is ready to prosecute the defendant in the trial court.

IV. This Court may recall and re-issue its mandate.

The State may move to withdraw a mandate within the same term it issues. *Hartfield v. Thaler*, 403 S.W.3d 234, 239 (Tex. Crim. App. 2013). This Court may recall and re-issue its mandate if it “vacates or modifies its judgment or order.” Tex. R. App. P. 18.7. This Court has the authority to vacate its judgments within the same term they issue. *Deramee v. State*, 379 S.W.2d 908, 909 (Tex. Crim. App. 1964).

The Court’s judgment and mandate in this case issued this term. If this Court were to conclude that its judgment should have remanded the case to the trial court, it has the power to conform the mandate to such a judgment.

V. Prayer

The State requests that this Court, on its own motion, reconsider its mandate in this case. The State is not requesting rehearing of the merits of the case or re-issuance of the opinion, but rather assurance that the mandate conforms to the intended judgment of the Court.

Respectfully submitted,

/s/ Joshua Vanderslice

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of this Motion has been served on Michael Mowla as appellate counsel for appellant Christopher Rion via eFile at michael@mowlalaw.com on March 23, 2022.

/s/ Joshua Vanderslice
JOSHUA VANDERSLICE

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